

JERRY HARKINS,)
)
 Petitioner,) 3:10-cv-00372-ECR-RAM
)
 vs.) **ORDER**
)
 JACK PALMER, *et al.*,)
)
 Respondents.)
)
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By order filed November 2, 2010, the Court directed petitioner to submit a signature page, because the petition lacked a signature page. (Docket #7). The Court also directed the Clerk to file the petition. (Docket #7 and #8). On November 15, 2010, petitioner filed the required signature page. (Docket #9). The habeas petition is supplemented by the signature page. (Docket #8 and #9). The Court has reviewed the petition. The petition shall now be served on respondents. A petition for federal habeas corpus should include all claims for relief of which petitioner is aware.

1 If petitioner fails to include such a claim in his petition, he may be forever barred from seeking
2 federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions).

3 In addition, the Court has reviewed petitioner's application to proceed *in forma*
4 *pauperis*. (Docket #5). Petitioner has paid the filing fee for this action (Docket #4), making the
5 application to proceed *in forma pauperis* unnecessary in this case. Petitioner's application to
6 proceed *in forma pauperis* is denied.

7 Petitioner has also filed a motion for the appointment of counsel. (Docket #6). There
8 is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania*
9 *v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The
10 decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th
11 Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.),
12 *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the
13 case are such that denial of counsel would amount to a denial of due process, and where the
14 petitioner is a person of such limited education as to be incapable of fairly presenting his claims. *See*
15 *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The petition
16 on file in this action is well-written and sufficiently clear in presenting the issues that petitioner
17 wishes to bring. The issues in this case are not complex. It does not appear that counsel is justified
18 in this instance. The motion shall be denied.

19 **IT IS THEREFORE ORDERED** that the Clerk shall **ELECTRONICALLY**
20 **SERVE** the petition (Docket #8) and signature page (Docket #9) upon the respondents.

21 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from
22 entry of this order within which to answer, or otherwise respond to, the petition. In their answer or
23 other response, respondents shall address any claims presented by petitioner in his petition.
24 Respondents shall raise all potential affirmative defenses in the initial responsive pleading, including
25 lack of exhaustion and procedural default. **Successive motions to dismiss will not be entertained.**

1 If an answer is filed, respondents shall comply with the requirements of Rule 5 of the Rules
2 Governing Proceedings in the United States District Courts under 28 U.S.C. §2254. If an answer is
3 filed, petitioner shall have **forty-five (45) days** from the date of service of the answer to file a reply.

4 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the
5 Attorney General of the State of Nevada a copy of every pleading, motion, or other document he
6 submits for consideration by the Court. Petitioner shall include with the original paper submitted for
7 filing a certificate stating the date that a true and correct copy of the document was mailed to the
8 Attorney General. The Court may disregard any paper that does not include a certificate of service.
9 After respondents appear in this action, petitioner shall make such service upon the particular Deputy
10 Attorney General assigned to the case.

11 **IT IS FURTHER ORDERED** that petitioner's application to proceed *in forma*
12 *pauperis* (Docket #5) is **DENIED**.

13 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of
14 counsel (Docket #6) is **DENIED**.

15 Dated this 14th day of December, 2010.

16 
17 UNITED STATES DISTRICT JUDGE